

July 29, 1993
REPORT TO THE COMMITTEE
ON PUBLIC SERVICES AND SAFETY

PAY PHONE PROLIFERATION AND CRIMINAL ACTIVITY

BACKGROUND

In an interim status report on pay telephone proliferation, the City Manager stated that efforts would be made to seek voluntary cooperation of telephone companies and business owners to restrict the use or remove problem telephones. (Attachment 1.)

In pursuit of the above, a representative of our office has sought the views of members of the San Diego Pay Phone Owners Association's Board of Directors in regard to a prepared draft ordinance to restrict or remove problem telephones. Board members expressed a willingness to cooperate with the Police Department and the City Attorney's Office in dealing with telephones being used for criminal activities. They were told that the pay telephone proliferation and criminal activity item was docketed for the August 4, 1993, meeting of the Public Services and Safety Committee. It is anticipated that views of the telephone owners will be further expressed at that Committee meeting.

PROPOSED DRAFT ORDINANCE REGULATING PUBLIC PAY PHONES

The City of Santa Ana has enacted an ordinance regulating pay telephones. Attachment 2 is a draft ordinance closely resembling the Santa Ana ordinance and tailored as a proposed draft amendment to the San Diego Municipal Code.

The proposed draft ordinance lists the circumstances under which public telephones would be a public nuisance. When voluntary measures have failed, it allows the Chief of Police to abate the nuisance after reasonable efforts to work with the property owner and telephone vendor. A key element of the proposed draft ordinance is to seek voluntary compliance before taking abatement action.

The issue of state preemption was considered. We concur in and adopt a recent memorandum opinion by the Public Utilities Commission concluding that local governments have the authority to order the removal of public telephones for public safety or

public nuisance reasons. Public pay telephone removal is not preempted by state law. It differs from the removal of private telephone lines used for illegal purposes which is regulated exclusively by Public Utilities Commission Rule 31. This distinction is discussed more extensively in Attachment 3.

LOS ANGELES TELEPHONE NUISANCE POLICY STATEMENT

The Public Safety Committee of The City of Los Angeles approved a Public Nuisance Policy Statement which provides a procedural process for restricting usage of and possible removal of public pay phones. The process allows for various findings to be established and steps taken before any public pay phone is restricted in use or removed. This policy allows for affected communities and phone companies to assist the Police Department in determining the best solution to reducing the use of pay phones by drug dealers.

The final paragraph of the Committee's report follows:

The Committee in a 2 to 1 vote approved the proposed Public Telephone Nuisance Policy Statement. The Committee believes that the proposed Policy balances the safety of the community and the rights of private property owners. It will allow the Police Department to use this mechanism as a deterrent to drug crimes while at the same time provide the community and the phone companies input. The Police Department and representatives of the phone companies voiced support for the proposed Policy Statement.

The Los Angeles City Council approved the report of its Public Safety Committee which includes the Public Telephone Nuisance Policy Statement included in Attachment 4. The Council did not enact an ordinance, however.

Informal discussions with the Los Angeles City Attorney's Office indicated that telephone companies are cooperating with the Police Department in implementing the Public Telephone Nuisance Policy.

The San Diego Pay Phone Owners Association favors a pay telephone restriction pilot program in high crime areas or places where telephones are being used for criminal activities. Various restrictions could be placed on problem telephones identified by the Police Department and community members. The range of alternatives extends from blocking incoming calls to removing one

or all of the telephones. The association envisions a program similar to the MacArthur Park area project in Los Angeles which is mentioned in the Los Angeles Public Safety Committee Report.

SUMMARY

1. The City of San Diego may regulate pay telephones used for criminal purposes. Attachment 2 is a proposed draft ordinance regulating the restriction or removal of problem telephones.

2. The proposed draft ordinance requires the Chief of Police to make reasonable efforts in obtaining voluntary compliance before taking abatement action.

3. The San Diego Pay Phone Owners Association expressed a willingness to cooperate in the restriction or removal of problem telephones. It proposes a pay telephone restriction pilot program.

Respectfully submitted,

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City Attorney

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Attachments

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